

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

BTNC, INC.

Request for Temporary Waiver

CSR No.

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Federal Communications Commission
Bureau / Office

To: Media Bureau

REQUEST FOR TEMPORARY WAIVER

I. INTRODUCTION TO BTNC

BTNC, Inc. is an African American owned and controlled not-for-profit corporation which has been established to provide the Black Television News Channel—the nation's first national black news and information service—to an historically underserved black audience.¹

Today, the African American audience is under-served and misrepresented by existing television programming, especially television news programming. African Americans believe that television news today focuses negatively on their communities and perpetuates stereotypes. For decades, educators and parents have feared that children are getting a skewed concept of the abilities and character of African Americans based on the stereotypes seen on TV. Several recent academic studies and industry data confirm that negative imagery of blacks by mainstream media news has created a damaging, self-fulfilling prophecy for black youth and has bolstered fear among white communities.

¹ The current Directors of BTNC, Inc., each of whom are members, are: J.C. Watts, chairman of the J.C. Watts Companies and formerly Representative to the U.S. Congress from the fourth district of Oklahoma and chairman of the Republican Conference (www.wattsconsultinggroup.com/wcg-jcwatts.htm); Steve Pruitt, former Staff Director of the Committee on the Budget of the United States House of Representatives and former Executive Vice President for Operations of the United Negro College Fund, among other positions (www.wattsconsultinggroup.com/wcg-stevepruitt.htm); and veteran Florida News Channel managing partner Robert Brillante.

African American households are television's heaviest and most loyal viewers, watching 77.4 hours of television per week, 40% more than any other group. Yet, none of the currently available news channels rank among the top 20 rated networks for African Americans.

African Americans demonstrate a strong preference for programming that "speaks to them," and they will seek out networks that offer black-oriented programming. More than 80% of people of color state it is "very important" to have a news channel dedicated to the unique interests and needs of our black communities.

Although the African American audience is growing both in MVPD subscription levels and economic importance to the cable and satellite delivery industries, repeated governmental efforts to facilitate service to that audience have failed. Congress and the FCC have tried media ownership rules, tax certificates, commercial leased access, public access, special access rules for "qualified minority programming sources," 4% set-asides on satellite—and still the national goal of a diversity of programming voices remains shamefully unfulfilled.

BTNC plans to fill the void in the programming landscape by providing African Americans with a voice in the mainstream debate of cultural, social, political and economic issues that impact each of our lives. BTNC intends to establish itself as the channel African Americans turn to for daily news and information. BTNC's principals combine experience in running a news channel with intimate knowledge of the African American community and viewing audience.

Like all new programming networks, the immediate challenge for BTNC is to acquire substantial carriage on either direct broadcast satellite services or on cable systems. The critical opportunity for its birth is now being offered to BTNC: an opportunity to be carried on a non-exclusive basis within the satellite public interest band by a major satellite MVPD. That band,

established by Congress in 1992, is set aside for “noncommercial programming of an educational or informational nature.”²

BTNC is perfectly suited to fulfill this vision. BTNC is organized as a not-for-profit corporation, meaning that earnings are ploughed back into programming. Its mission is to deliver news and other programming of an educational or informational nature. Its proposed programming day will be anchored by a live, daily newscast in prime-time, and will include 10 more hours of news, 8 hours of feature programming, and 5 hours of additional educational programming.

BTNC’s programming will:

- provide access to information and educational programming to meet the specific needs of a growing and dynamic population;
- shed light on the unique social, economic, and political challenges facing many of our urban communities;
- empower black youth with positive black role models, educational programming, and profiles of black leaders revered by all Americans;
- build a bridge to provide better understanding between our nation’s diverse cultures;
- close the “image gap” that exists today between the negative African American stereotypes perpetuated by mainstream media news and our enterprising black communities; and
- engage African Americans in mainstream media political, economic, and social discourse.

BTNC can be the true voice of a diverse and dynamic culture.

But for one non-statutory condition added by the Commission in a 1998 rulemaking, BTNC could unquestionably fulfill the shared desire of Congress, the FCC, and the black community for an authentic and serious African American news voice in MVPD programming. The purpose of this Petition is to seek temporary waiver of that non-statutory limitation, so that the elusive promise of programming diversity can at last be fulfilled.

² See 47 U.S.C. §335(b).

II. THE DBS SET-ASIDE DOES NOT FORBID A TEMPORARY WAIVER TO INCLUDE ADVERTISING

In Section 335(b) of the Communications Act, Congress directed the FCC to require DBS providers to reserve 4%-7% of channel capacity for “noncommercial programming of an educational or informational nature.” Neither Congress nor the FCC has defined the term.³ Instead, the Commission adopted a short-hand policy determination that “in order to qualify as noncommercial programming, the programmer cannot include advertisements.”⁴ By footnote, the FCC then tied Section 335(b) to the underwriting guidelines applied to public broadcasting stations by Section 399B. Fifteen years after adoption of the set-aside, no authentic and serious African American news and information voice has emerged under that stricture.

The FCC’s policy stricture against advertising is not required by law. By its terms, Section 399B of the Act applies “[f]or purposes of this section,” which applies only to public broadcasting stations that utilize free, over-the-air broadcast spectrum. By contrast, there is no similar statutory provision applicable to DBS in general or Section 335 in particular. The purpose of the DBS set-aside is to promote a diversity of “educational and informational” programming provided by a qualified noncommercial entity.⁵ BTNC is organized as a *nonprofit*, consistent with the underlying policy goals of the DBS set-aside requirement. BTNC is dedicated to providing educational and informational programming. As discussed below, the Commission has ample authority, and a variety of precedent, for temporarily waiving its policy statement for three years to allow BTNC to establish itself as a robust MVPD programmer.

³ See *Implementation of Section 25 of the Cable Television and Consumer Protection Act of 1992 Report and Order, Direct Broadcast Satellite Public Interest Obligations*, 13 FCC Rcd 23,254, 23,293 (1998) (“1998 DBS Public Interest Order”).

⁴ *Id.* at 23,286.

⁵ See generally, *1998 DBS Public Interest Order*.

III. THERE IS GOOD CAUSE FOR A TEMPORARY WAIVER OF THE COMMISSION'S POLICY STATEMENT, AND A SUBSTANTIAL PUBLIC INTEREST IN PROVIDING NEWS AND INFORMATION TO AN UNDERSERVED AFRICAN AMERICAN MARKET

The FCC may waive statements of policy for good cause.⁶ “Good cause” is deemed to exist where “special circumstances” warrant deviation from the general rule, and where such deviation would better serve the public interest than would strict adherence to the general rule. *Id.* There should be no doubt that after years of failed attempts, the opportunity to fill the void in news coverage oriented to African Americans represents “special circumstances.” The unique benefit of bringing diversity to discourse has already been recognized by the Supreme Court as such a circumstance.⁷

It also is well recognized that the costs of producing quality news coverage are among the highest of any programming for any channel, leading even commercial channels to curtail or drop news programming.⁸ Attempting to finance such programming with enhanced underwriting alone – which is what the Commission’s policy statement in the *1998 DBS Public Interest Order* otherwise would require – would pose precisely the substantial hardship to BTNC that the requested waiver is intended to relieve.

⁶ 47 C.F.R. § 1.3; *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1166 (D.C. Cir. 1990). See, e.g., *Amendment of the Television Table of Allotments to Delete Non-commercial Reservation of Channel 39*, Memorandum Opinion and Order, 20 FCC Rcd 16,854, 16,859-60 (2005).

⁷ *Grutter v. Bollinger*, 539 U.S. 306 (2003). See also, *Turner Broad. Sys. v. FCC*, 520 U.S. 180, 192 (1997) (“We have noted that it has long been a basic tenet of national communications policy that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public.”) (internal citations omitted).

⁸ See Howard J. Blumenthal & Oliver R. Goodenough, *This Business of Television*, 26 (3d ed. 2006) (indicating that news is the biggest cost item – typically 20-25% of the total operating budget of stations in many of the top 50 markets). See also, Michael Manekin, *For Latinos, Less News is Bad News*, *Oakland Tribune*, (Oct. 28, 2006) (discussing NBC’s cost-cutting decision to axe Spanish language news programming.); Project for Excellence in Journalism, *The State of the News Media 2006*, www.stateofthenewsmedia.org/2006/narrative_networktv_newsinvestment.asp?cat=6&media=5 (last visited March 8, 2007) (Discussing cuts to newstaff and Bureaus at major media and lost news minutes in each newscast.); *2002 Biennial Review – Review of the Commission’s Broadcast Ownership Rules*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13,620, 13,685 (2003) (recognizing expense of originating news programming)

The public interest could not be better served than by a waiver that allows a non-profit to meet the marketplace demand for a channel oriented to serious dialogue for African Americans. The 1992 Cable Act is prefaced with an explicit Congressional directive that the Commission should “promote the availability to the public of a diversity of views and information” and “rely on the marketplace, to the maximum extent feasible, to achieve that availability.”⁹

While BTNC knows of no precedent addressed specifically to the DBS set-aside channels, the FCC previously has waived a wide variety of its noncommercial requirements before. It has permitted a noncommercial FM radio station on an Indian reservation to air classified advertising.¹⁰ On the opposite end of the spectrum, it has allowed noncommercial stations to broadcast fundraisers for the St. Paul Chamber Orchestra and Wolf Trap.¹¹ In other cases, the Commission has waived the noncommercial requirement to permit advertisements in order to advance overriding policy objectives,¹² and has granted waivers so that service costs could be underwritten by the community of advertisers, rather than the far more limited community of corporate donors.¹³ Other waivers have been targeted specifically to advance minority programming and diversity, such as where the Commission waived its intraband

⁹ The 1992 Cable Act that adopted the DBS set-aside regime specifically provides in §§ 2(b)(1) & (2) that the Commission should “promote the availability to the public of a diversity of views and information” and “rely on the marketplace, to the maximum extent feasible, to achieve that availability.” Cable Consumer Protection and Competition Act of 1992, P.L. 102-385, 106 Stat. 1460 (codified at 47 U.S.C. § 521).

¹⁰ In *Makah Communication Enters.*, 65 FCC.2d 436 (1977), the Commission allowed a noncommercial FM station to broadcast 6 minutes per day classified advertising to its community of license in view of the “unique and unusual circumstances” that that station was on an Indian Reservation, remote from any large population center with no other broadcast facilities or daily or weekly newspapers nearby.

¹¹ In *Richard J. Bordoff, Esq.*, Letter, 8 FCC Rcd. 7909 (MMB1993), and *Cohn and Marks*, 51 RR.2d (P&F) 659 (1982), the Commission waived its policy barring noncommercial stations from raising funds on behalf of third parties to allow stations to broadcast fundraisers on behalf of, respectively, the St. Paul Chamber Orchestra and Wolf Trap Foundation, in each case noting the severe financial distress faced by organizations that have contributed substantially to bringing enriching programming to national audiences.

¹² See e.g., *Community College of Baltimore*, 30 FCC.2d 868 (1971); *Diablo Unified Sch. Dist.*, 32 FCC.2d 21 (1971) (recognizing the interests in preserving cultural and historical value in radio recordings.).

¹³ See *Int'l Expo Info. Broad., Inc.*, 89 FCC.2d 1374 (1982) (granting waiver of rules prohibiting experimental applicants from charging others for use of their signal where the petitioner was a non-profit organization that requested waiver so that it could receive money for on-air identifications and where funds received would go to offset costs and any profit would be donated to charity).

channel swap policy to foster the development of Spanish language network programming, in order to “increase and strengthen program diversity” and add “increased local news directed to the Hispanic audience.”¹⁴

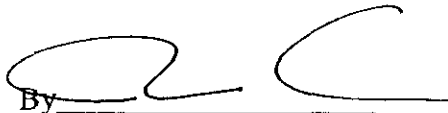
BTNC submits that now is the time for a waiver to advance the public policy goals inherent in its proposal to serve the African American community.

V. CONCLUSION

For the foregoing reasons, BTNC requests that the Commission grant BTNC a three-year waiver, starting from its launch by a national DBS provider, of the requirement in the *DBS Public Interest Order* that “in order to qualify as noncommercial programming, the programmer cannot include advertisements.”

Respectfully submitted,

BTNC, INC.

By 

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¹⁴ In *Amendment to the Television Table of Allotments to Delete Noncommercial Reservation of Channel 39*, 20 FCC Rcd 16,854, 16,859 (2005), which involved a Phoenix-Holbrook, AZ TV channel swap to help Tele-mundo without opening the channel for competing applications, the FCC waived its intraband channel swap policy at § 1.420(h) of its rules to “creat[e] a more competitive environment for the continuing growth and development of Spanish language network programming, and in doing so noted, *inter alia*, the under-representation of Spanish media. *Id.* at 16,859-60.

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MM Docket:

To: Mass Media Bureau:

DECLARATION OF J.C. WATTS

1. My name is J.C. Watts. I am President of BTNC, Inc., owner and provider of the Black Television News Channel. By virtue of my position, I am familiar with the facts set forth in the foregoing Request for Temporary Waiver ("Request").
2. I have read the foregoing Request and I am familiar with the contents thereof.
3. I declare under penalty of perjury that the facts contained herein and within the foregoing Request are true and correct to the best of my knowledge, information, and belief.



J.C. Watts
President
BTNC, Inc.

Executed on: March , 2007